

Claimant was employed as a project manager for respondent and estimated that he spent 85 to 90 percent of his workday using a computer keyboard. The remainder of his time was spent taking notes while on the telephone or in meetings. In the latter part of 2004 claimant began to experience numbness in both hands, both wrists and occasionally

up into the forearm. Claimant testified the symptoms would worsen during the course of his workday.

Claimant testified that on October 15, 2004, he told his supervisor, Andrew Ice, he was having problems with his hands and wrists as a result of his work. Claimant specifically noted that the amount of typing he was doing was causing numbness and pain in his hands. The claimant indicated he got no reaction from Mr. Ice nor referral for medical treatment. As a result claimant sought medical treatment with his own physician. Claimant testified that when he went to his doctor's appointments he told his supervisor that he was seeking treatment for his hands and arms.

Claimant also contacted Walter Atchison, a systems administrator and the person in charge of equipment, and obtained an ergonomic keyboard as well as a new chair with adjustable arm rests. Claimant told Mr. Atchison that he needed the ergonomic keyboard because he was experiencing pain and numbness in his wrists and arms.

Mr. Ice, claimant's supervisor, testified that claimant would spend about two hours of his workday actually using his computer keyboard. But Mr. Ice agreed that his opinion regarding the time claimant spent working on the keyboard was a rough estimate. Mr. Ice testified he could not recall a time when claimant made any allegation that he had injured himself at work. However, on cross-examination Mr. Ice agreed claimant had complained on numbness in his hand and arms but Mr. Ice thought it was due to writing while taking notes rather than typing on the keyboard. Mr. Ice testified:

Q. Mr. Brown has previously indicated in his statement that he had a conversation with you in October of 2004 where he described ongoing problems with his arms which he felt may be connected to his keyboard use and his job duties. Do you remember that conversation?

A. I remember a conversation with Mike saying he had some trouble with his arms, but not related to necessarily his keyboarding and duties. I remember him saying that he was having some difficulty and, you know, in writing and he would even have to sometimes, you know, switch hands, I remember him saying, to write. But it wasn't necessarily attributed to sitting down behind a keyboard and typing or whatever work-related duties he had.

Q. You think he did specifically mention that writing was seemingly aggravating it?

A. I do.

Q. You do recall this conversation where Mr. Brown indicated he was developing numbness in his hands and arms?

A. I remember some conversations where Mike had said that he was having some loss of sensation, yeah. Yeah, I do.

Q. How detailed is your memory of this conversation?

A. I don't know, I mean, probably what I've just expressed to you right now.

Q. Is it possible that Mr. Brown did state to you that he felt that his arm problems were from some of the things he was doing here at Sprint?

A. I guess when I think about that question it's possible he could have, but I don't recall it. And then when I think about the kind of work Mike did where it wasn't a lot of data entry, repetitive tasks, I'm not sure I would have understood it if he would have thought that.

Q. But it its possible that was part of the discussion?

A. It's certainly possible, I mean, sure.<sup>1</sup>

Mr. Ice further noted he would not have considered a complaint of numbness while keyboarding as a workers compensation injury. Mr. Ice testified:

Q. What I'm getting at is if a worker, one of your workers told you, you know, I'm developing some numbness in my arms when I do keyboarding, just based on your training would you know whether that's a workers' compensation situation or not?

A. I probably would not because I wouldn't necessarily know what it was related to.

Q. If someone reported that to you, that they were developing numbness wile using their keyboard, you would not necessarily send them to HR to report a workers compensation injury?

A. Not from that little bit of knowledge, no.<sup>2</sup>

Claimant initially saw Dr. Lisa L. Pioli, his family physician, on December 14, 2004, with complaints of numbness in both hands. Conservative care was provided and an EMG nerve conduction study was performed by Dr. Robert L. Satake on Janurary 12, 2005.<sup>3</sup> The study indicated claimant had mild median neuropathies at the wrist and Dr. Satake concluded claimant most likely had carpal tunnel syndrome.

Claimant was examined at his attorney's request by Dr. Daniel D. Zimmerman on April 18, 2005. Dr. Zimmerman diagnosed claimant with bilateral carpal tunnel syndrome with the possibility of ulnar nerve entrapments at Guyon's canal bilaterally. And the doctor

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<sup>1</sup> Ice Depo. at 16-17.

<sup>2</sup> *Id.* at 21.

<sup>3</sup> P.H. Trans., Resp. Ex. 1.

opined claimant's repetitive work activities, especially the almost constant use of a computer keyboard caused the problems claimant was experiencing in his bilateral upper extremities.

The injured worker is required to give the employer notice of accident, within 10 days after the date of a work-related accident, or establish just cause for not giving the employer the 10-day notice within 75 days.<sup>4</sup> Here, the claimant contends that he gave respondent timely notice of his accident by notifying his supervisor on October 15, 2004, that work was causing pain and numbness in his hands and wrists. Claimant's supervisor recalled claimant's complaints of numbness in his hands and wrists but recalled it was related to his writing at work. The supervisor further agreed it was possible claimant had complained about keyboarding causing problems with his hands and wrists. Finally the supervisor agreed that he would not consider such complaints an accident for which he would have referred claimant to human resources for filling out a workers compensation claim.

It is not unusual that a lay person such as claimant's supervisor, if unfamiliar with workers compensation law, would not equate the term accident with repetitive or mini-trauma injuries. But it is clear that claimant was expressing that his work duties were causing the onset of pain and numbness in his hands and wrists. Such a complaint clearly raises the connection between work and the condition. Accordingly, under the facts of this case, the Board concludes the claimant provided timely notice.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>5</sup> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."<sup>6</sup>

The respondent contends claimant did not meet his burden of proof that he suffered accidental injury because his supervisor estimated that claimant only performed keyboarding for 2 hours a workday instead of the majority of the workday as claimant testified. However, the supervisor agreed he was just making a rough estimate and he did not base his opinion upon watching the claimant at work. Moreover, the supervisor agreed that when not keyboarding the claimant would typically be taking notes while engaged in telephone conferences or in meetings. And he did recall that claimant complained that writing was causing pain and numbness in his hands.

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<sup>4</sup> See K.S.A. 44-520.

<sup>5</sup> K.S.A. 44-501(a).

<sup>6</sup> K.S.A. 2004 Supp. 44-508(g).

The Board concludes the claimant has met his burden of proof to establish he suffered accidental injury to his upper extremities as a result of his work activities with respondent. Accordingly, the ALJ's Preliminary Decision is reversed.

**WHEREFORE**, it is the finding of the Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated May 25, 2005, is reversed and remanded to the Administrative Law Judge for further orders consistent herewith.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of July 2005.

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BOARD MEMBER

c: Steven R. Jarrett, Attorney for Claimant  
Michelle Daum Haskins, Attorney for Respondent and its Insurance Carrier  
Robert H. Foerschler, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director